

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MUCHOKI DESHAWN BRYANT,

Defendant-Appellant.

UNPUBLISHED

August 26, 2008

No. 278187

Wayne Circuit Court

LC No. 06-010393-01

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to four years' probation, including six months of electronic monitoring. We affirm.

Defendant argues on appeal that there was insufficient evidence to convict him of the crime charged. We disagree. A claim based on insufficiency of evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In determining whether sufficient evidence has been presented in support of a conviction, this Court reviews the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Pursuant to MCL 333.7401(2)(d)(iii), to convict a defendant of possession with intent to deliver marijuana, the prosecution must prove that (1) the recovered substance is marijuana, (2) the weight of the substance is less than five kilograms or fewer than 20 plants, (3) defendant was unauthorized to possess the substance, and (4) defendant knowingly possessed the substance intending to deliver it. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). Defendant contests the sufficiency of the evidence only with regard to the fourth element.

Possession with the intent to deliver marijuana may be established by circumstantial evidence and the reasonable inferences that may be drawn therefrom. *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748 (1992). Actual possession of the controlled substance is not required and constructive possession of the substance will be sufficient. *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002). "Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between defendant and the contraband." *Id.* A person's presence at a location where the controlled substance is found is insufficient to establish

constructive possession without an additional nexus between the person and the substance. *Wolfe, supra* at 520. Intention to deliver may be inferred from all the facts and circumstances and the reasonable inferences to be drawn therefrom, including the quantity and packaging of the narcotics in defendant's possession. *Id.* at 524.

When reviewing the sufficiency of the evidence, this Court should not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *Wolfe, supra* at 514-515. "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

First, there was sufficient evidence that defendant was knowingly in possession of the marijuana. While doing surveillance at 13463 Buffalo Street, a narcotics officer observed what he perceived to be a narcotics transaction between defendant and an unidentified black male. The officer testified that the unidentified male handed money to defendant who then proceeded to retrieve a small plastic bag from a nearby Dodge Ram. During the investigation 19 similar plastic bags were found in the Dodge Ram. A rational inference may be drawn that defendant knew the marijuana was kept in the Dodge Ram, he exercised control over the marijuana and sold at least one plastic bag to the unidentified black male. The totality of the circumstances indicates that defendant was in constructive possession of the marijuana found in the Dodge Ram.

Second, there was sufficient evidence that defendant intended to distribute the marijuana. Investigation at the Buffalo Street residence revealed 19 individually packaged small plastic bags of marijuana having a street value of approximately \$10 each were found. A narcotics officer testified that, based on his experience, the marijuana was packed for sale. Based on the quantity and packaging of the marijuana in defendant's possession there was sufficient evidence that defendant had the requisite intention to deliver marijuana.

Defendant's argument that the prosecution's evidence was directly contradicted by equal or greater evidence presented by the defense lacks merit. The judge, as trier of fact, chose to credit the testimony of the police officers rather than the defense theory of the case. The trier of fact is to weigh the evidence and to make credibility determinations arising therefrom. *Wolfe, supra* at 514-515. This Court will not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens